

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

JEFFREY DESKOVIC,

Plaintiff,

vs.

CITY OF PEEKSKILL, PUTNAM COUNTY,  
WESTCHESTER COUNTY, DAVID LEVINE,  
THOMAS MCINTYRE, WALTER BROVARSKI,  
EUGENE TUMOLO, JOHN AND JANE DOE  
SUPERVISORS, DANIEL STEPHENS, LOUIS  
ROH, MILLARD HYLAND, PETER INSERO, and  
LEGAL AID SOCIETY OF WESTCHESTER  
COUNTY,

Defendants.

Index No. CV-07-8150 (KMK)(GAY)

**STIPULATION AND ORDER OF  
DISMISSAL WITHOUT PREJUDICE  
AS TO  
WESTPORT INSURANCE CORPORATION  
as successor-in-interest to  
NORTH RIVER INSURANCE COMPANY  
and  
WESTPORT INSURANCE CORPORATION  
as a successor-in-interest to  
INTERNATIONAL INSURANCE COMPANY  
REGARDING  
PEEKSKILL'S THIRD-PARTY ACTION  
IN THE MCGARR ACTION**

LINDA MCGARR,

Plaintiff,

vs.

CITY OF PEEKSKILL, WESTCHESTER  
COUNTY, DAVID LEVINE, THOMAS  
MCINTYRE, WALTER BROVARSKI, EUGENE  
TUMOLO, JOHN AND JANE DOE  
SUPERVISORS, DANIEL STEPHENS, LOUIS  
ROH, AND MILLARD HYLAND,

Defendants.

Index No. CV-07-9488 (KMK)(GAY)

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CITY OF PEEKSKILL,

Third-Party Plaintiff,

vs.

WESTPORT INSURANCE CORPORATION as  
successor-in-interest to NORTH RIVER  
INSURANCE COMPANY, WESTPORT  
INSURANCE CORPORATION as a successor-in-  
interest to INTERNATIONAL INSURANCE  
COMPANY, UNDERWRITERS AT LLOYD'S,  
LONDON, CX REINSURANCE COMPANY  
LIMITED as successor-in-interest to CNA  
INTERNATIONAL REINSURANCE  
COMPANY, CX REINSURANCE COMPANY  
LIMITED as successor-in-interest to CNA  
REINSURANCE OF LONDON, LIMITED,  
SPHERE DRAKE INSURANCE PLC, ILLINOIS  
UNION INSURANCE COMPANY, UNITED  
NATIONAL INSURANCE COMPANY,  
TRAVELERS INDEMNITY COMPANY as  
successor-in-interest to GULF INSURANCE  
COMPANY, AMERICAN MOTORISTS  
INSURANCE COMPANY as successor-in-  
interest to AMERICAN PROTECTION  
INSURANCE COMPANY, AMERICAN  
MOTORISTS INSURANCE COMPANY as  
successor-in-interest to SPECIALTY NATIONAL  
INSURANCE COMPANY, HARCO NATIONAL  
INSURANCE COMPANY, and AMERICAN  
ZURICH INSURANCE COMPANY

Third-Party Defendants.

**WHEREAS**, Third-Party Plaintiff City of Peekskill ("Plaintiff" or "Peekskill") has asserted claims against Third Party Defendant Westport Insurance Corporation as successor-in-interest to North River Insurance Company and Westport Insurance Corporation as a successor-in-interest to International Insurance Company ("Westport") in the above-captioned Third-Party Actions filed in both *Deskovic v. City of Peekskill, et al.*, No. 07-CV-8150 (the "*Deskovic* Action") and *McGarr v. City of Peekskill, et al.*, No. 07-CV-9488 (the "*McGarr* Action").

**WHEREAS**, the undersigned parties hereby give notice that the above-captioned Third-Party Actions filed in both the *Deskovic* and *McGarr* Actions have been settled pursuant to a settlement agreement between the undersigned parties.

**WHEREAS**, the undersigned parties hereby give notice that pursuant to the terms of the settlement between the undersigned parties, the above-captioned Third-Party Action filed in the *McGarr* Action is voluntarily dismissed, without prejudice, against Westport until the *McGarr* Action's conclusion or until Westport ceases to defend Peekskill in the *McGarr* Action up to the remaining limits of the 1990 North River Policy.<sup>1</sup>

**WHEREAS**, the above-captioned Third-Party Action filed in the *Deskovic* Action has or will be dismissed with prejudice by separate stipulation against Westport.

**WHEREAS**, the above-captioned Third-Party Actions filed in both the *Deskovic* and *McGarr* Actions filed against the remaining Third-Party Defendants have or will be dismissed with or without prejudice by separate stipulations so that the Third-Party Actions filed in both the *Deskovic* and *McGarr* Actions will each be dismissed in their entirety.

**WHEREAS**, Peekskill and Westport seek to reduce the expense and burden of litigation to themselves, to the other parties in this action, and to the Court.

**NOW, THEREFORE**, in consideration of this Stipulation of Dismissal without Prejudice, Peekskill and Westport, by and through their respective counsel of record, hereby mutually agree to the following:

#### **STIPULATION OF DISMISSAL WITHOUT PREJUDICE**

**IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned parties that pursuant to Federal Rule of Civil Procedure 41 and court order all claims in the above-captioned Third-Party action filed in the *McGarr* Action are dismissed without prejudice as against Westport until the *McGarr* Action's conclusion or until Westport ceases to defend Peekskill in the *McGarr* Action up to the remaining limits of the 1990 North River Policy.

**IT IS FURTHER STIPULATED AND AGREED**, that each undersigned party shall bear its own costs and attorneys' fees.

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<sup>1</sup> North River Insurance Company Policy No. FTZ 51144 for the Policy Period 12/31/1989 – 12/31/1990.

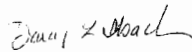
**IT IS FURTHER STIPULATED AND AGREED**, that this Stipulation may be signed in counterparts with all counterparts together constituting one complete Stipulation and that signatures received by facsimile or e-mail shall be deemed an original for purposes of this Stipulation.

*[signatures pages to follow]*

Dated: January 21, 2014

LEWIS BRISBOIS BISGAARD  
& SMITH LLP

By:



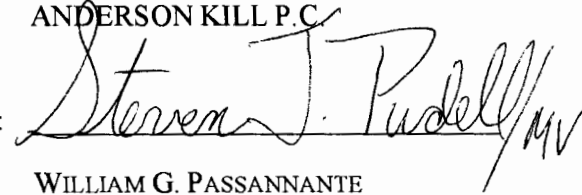
DARCY IBACH  
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TEL: (312) 463-3339

**ATTORNEYS FOR THIRD-PARTY DEFENDANTS  
WESTPORT INSURANCE CORPORATION AS  
SUCCESSOR-IN-INTEREST TO NORTH RIVER  
INSURANCE COMPANY; NORTH RIVER  
INSURANCE COMPANY; AND  
WESTPORT INSURANCE CORPORATION AS  
SUCCESSOR-IN-INTEREST TO INTERNATIONAL  
INSURANCE COMPANY**

Dated: January 21, 2014

ANDERSON KILL P.C.

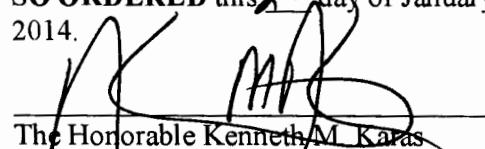
By:



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TEL: (212) 278-1000

**ATTORNEYS FOR THIRD-PARTY  
PLAINTIFF CITY OF PEEKSKILL**

SO ORDERED this 24<sup>th</sup> day of January,  
2014.

  
The Honorable Kenneth M. Karas  
United States District Judge